Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at http://about.jstor.org/participate-jstor/individuals/early-journal-content.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

right hip" were alleged. "Neuritis" is inflammation of the nerves; the sciatic nerves are the nerves of the hip. It would seem therefore that the defendant was fairly apprised of the nature of the case he must be prepared to meet and could not reasonably claim to be taken by surprise. The evidence, consequently, was admissible under the allegations. In *West Chicago St. R. Co.* v. *Levy*, 182 Ill. 525, 55 N. E. 554, under allegations of injury to "the back, spine and brain," evidence of "atrophy of the optic nerve" was held admissible, though two judges dissented and the ruling is certainly debatable. In *Kleiner* v. *Third Ave. R. Co.*, 162 N. Y. 193, 56 N. E. 497, proof of heart affection, paralysis of the dorsal muscles, vertigo and curvature of the spine was held not admissible under allegations of severe and painful contusions, severe nervous shock, concussion of the brain and injury for life. One judge dissented. The general question is fully discussed in the latter case. See also *Heister* v. *Loomis*, 47 Mich. 16; *Nebraska City* v. *Campbell*, 2 Black (U. S.) 590; *Hunter* v. *Stewart*, 47 Me. 419.

ELECTIONS—RIGHT OF BOARD OF ALDERMEN TO JUDGE OF ELECTION OF ITS OWN MEMBERS—CONSTRUCTION OF CHARTER.—By the charter of New York City, "the board of aldermen shall be judge of the election returns and qualifications of its own members, subject to review by certiorari of any court of competent jurisdiction." On the face of the returns, as they came from the board of canvassers, relator was defeated for alderman by one Chambers by a majority of 8 votes. Relator contested the election before the board of aldermen, who referred the matter to a committee. The committee recounted the votes and the majority report conceded the election to the relator by 103 votes. The minority report declared Chambers elected by 73 votes. The board upheld the minority report. In the Supreme Court, where the case was taken by certiorari, it was held that the board of aldermen had no authority to go behind the official returns; that in the phrase "judge of the election returns and qualifications" in the city charter, the word was used adjectively and not as a noun. (80 N. Y. Supp. 385). From this decision relator appeals. *Held*, that the word "election," as used in the charter, is a noun, and that the board of aldermen were not bound by the returns, but could go behind them in ascertaining whether a contestant was duly elected. But owing to the fact that the validity of the board's finding had not been properly brought before it, the court refused to disturb that finding. *People ex rel Krulish* v. *Fornes et al* (1903), — N. Y. — 67 N. E. Rep. 216.

In determining the meaning of the words "election returns and qualifications" the majority of the court applied the interpretation which has been universally given to the words "elections, returns and qualifications" as used relative to Congress in the United States constitution, and to similar words in most of the State constitutions. The omission of the comma was held to be of no importance. The minority however, in a vigorous opinion held that the comma had been purposely omitted by the commission which revised the charter with the evident purpose of limiting the power of the board and that it was quite inconceivable that the Legislature intended to grant to the board power to make a judicial inquiry, by calling witnesses to prove how many illegal votes had been cast for contesting candidates, etc.

The majority opinion is supported by *State* v. *Common Council*, 33 N. J. L. 111, where the wording of the charter was exactly as in this case. A perusal of the cases also shows that it is not only customary for the States to grant judicial power to municicipal legislative bodies in determining the election of its members, but that in many cases, this power has been expressly made exclusive of the courts. Where not made expressly exclusive, by weight of

authority, the courts are not ousted of jurisdiction. DILLON ON MUN. CORP. Sec. 202, and cases there cited. Contra. *People* v. *Metzker*, 47 Cal. 524; *Peabody* v. *School Committee*, 115 Mass. 383; *People* v. *Harshaw*, 60 Mich., 200. And where it is expressly provided that the findings of the board shall be subject to review by the courts, the courts may take original jurisdiction. *People* v. *Hall*, 80 N. Y. 117.

EQUITY—MORTGAGES—REDEMPTION BY CO-TENANT—IMPROVEMENTS—RENTS AND PROFITS—EXECUTORS' AND ADMINISTRATORS' LIABILITY FOR UNPAID CLAIMS.—J. D. McQueen mortgaged the land in controversy to Faber and Rogers in February, 1876, and died in October of the same year.

Complainant is one of J. D. McQueen's heirs. Defendant is Rogers' administrator.

Faber and Rogers proceeding under the mortgage sold the land and Rogers assumed the bid made therefor, and took possession.

This sale did not cut off the equity of redemption because it was held (in *Rainey* v. *McQueen*, 121 Ala. 191) that if on a sale of land under a power contained in a mortgage the land is bid off by a person who afterwards declines to take it and the mortgagee takes the land at the amount bid by such person without any negotiation with him, the mortgagee is to be regarded either as a mortgagee in possession or a purchaser at his own sale. In either case the right to redeem is not cut off.

Later Rogers purchased the equity of redemption from McQueen's administrators acting under order of the probate court. This sale was void on account of failure to name and describe the property in the petition for sale in the probate court.

This suit was begun by a Bill to Redeem and included a claim for rents and profits and for waste.

The defendant offered by way of defense, the settlement of the estate and his discharge as administrator, and made a claim for improvements, and the further defense that Atwood and Claude McQueen, brothers of the complainant, had each an interest in the estate equal to hers but being respectively 25 and 26 years of age at the time this bill was filed they were barred by the statute from asserting any claim to the lands or rent, and therefore the complainant should be allowed only one-third of the surplus rents and profits.

Held:—First, That in the redemption of property sold under a mortgage the administrator of the mortgagee's estate is charged with the knowledge imputed to the mortgagee, that the equity had not been extinguished and is not entitled to improvements other than such as were necessary to keep the premises in repair.

Second:—That the voluntary settlement and distribution of the estate by the administrator did not discharge him from liability to the complainant. By reason of her minority she was not required to make presentation of her claims and is exempt from the imputation of laches.

Third:—That where the complainant and two others were tenants in common of an equity of redemption, she was entitled in an action brought by herself alone to redeem, to recover on account of surplus rents and profits, the whole of the balance found dne from the mortgagee's estate and not merely her one-third interest therein. From this holding Dowdell and Sharpe JJ. dissented. *Whetstone et al* v. *McQueen* (1903), — Ala. — 34 So. Rep. 229.

The weight of authority seems to be with the majority decision. *Hubbard* v. *A. M. Dam Co.*, 20 Ver. 402, 50 Am. Dec. 41; *Robinson* v. *Leavitt*, 7 N. H. 73; 2 JONES MORTGAGES 176; 3 POM. EQ. JUR. 1212-1213-1220; 2 STORY EQ. 1023; *Boqut* v. *Coburn*, 27 Barb. 230; *In Re Willard*, 5 Wend. 94.

Contra: FREEMAN ON COTENANCY, Par. 176; *Kirkpatrick* v. *Matheod*, 4 Watts & S. 251; *Quinn* v. *Kenney*, 47 Cal. 147.